

STATE OF MICHIGAN
COURT OF APPEALS

DENNIS O. CROSBY, JOAN M. CROSBY,
JAMES R. DAMSEN, KATHRYN M. DAMSEN,
THOMAS R. SULLIVAN, JOAN T. SULLIVAN,
RONALD J. CHAMPAGNE, CHERYL L.
CHAMPAGNE, SHARON L. RUZYCKI,
RONALD E. VANGORDER, and SALLY A.
VANGORDER,

Plaintiffs-Appellees,

v

DIRECTOR OF DEPARTMENT OF NATURAL
RESOURCES, TREASURER OF STATE OF
MICHIGAN, OGEMAW COUNTY DRAIN
COMMISSIONER, OGEMAW COUNTY ROAD
COMMISSIONER, FOSTER TOWNSHIP
SUPERVISOR, F. L. HAYES, M.F. RAYMOUR,
FLORENCE REID, and their unknown heirs,
devisees, and/or assigns, LARRY L. CALVIN,
MAXINE H. CALVIN, WALLACE F.
WOLLPERT, VIRGINIA L. WOLLPERT,
ROBERT L. WATTON, ERIC SMITH, JULIE A.
SMITH, VANCE H. BUCHOLZ, KRISTINE E.
BUCHOLZ, JOSEPH G. DI LUIGI, JILL DI
LUIGI, JOHN DE SMIT, WALTER RAYMOND
SUBORA TRUST, MARY CARLINI, ROBERT
R. GALES, LUANN C. GALES, TIMOTHY R.
ROBISHAW, DIANE ROBISHAW, JULIAN &
BEVERLY J. PINON LIVING TRUST, JULIAN
PINON, TRUSTEE, BEVERLY J. PINON,
TRUSTEE, BARBARA B. KEEHN LIVING
TRUST, BARBARA B. KEEHN, TRUSTEE,
WILLIAM R. OLIVER, MARY ANN GIBBONS,
CHARLES G. BEYER, LOIS BEYER, LOIS J.
PRESNELL, KENNETH ANGELOSANTO,
MARCIJAN PROPERTIES, L.C., DARVIN E.
BURNSIDE, AND JUDITH L. BURNSIDE,

UNPUBLISHED
September 29, 2005

No. 254671
Ogemaw Circuit Court
LC No. 03-654684-CH

Defendants/Cross Defendants,
and

JOHN T. YOUNG AND MARIBELLE A.
YOUNG,

Defendants/Cross
Defendants/Counter Defendants-
Appellants,
and

PATRICIA A. ZECK TRUSTEE,

Defendant/Cross Plaintiff-Appellee,
and

MARK E. SCHNEIDER and MARY JO
SCHNEIDER,

Defendants/Cross Plaintiffs/Counter
Plaintiffs-Appellees.

Before: Meter, P.J., and Murray and Schuette, JJ.

PER CURIAM.

In this quiet title action, defendants John T. Young and Maribelle A. Young appeal by leave from the trial court's order granting partial summary disposition against defendants.¹ We reverse and remand.

I. FACTS

In the 1920s, Michael and Blanche Haley platted the Ambrose Beach subdivision, near Ambrose Lake, in Ogemaw County. The Haleys retained ownership of a strip of land that ran east and west along the lake and north and south along the eastern boundary of the subdivision. Separating this strip of land from the platted lots were portions of platted streets—Strand and Broadway. The streets never actually existed as functional streets, however, and Strand was abandoned in the 1950s but was never replatted.

¹ For ease of reference, John T. Young and Maribelle A. Young will be referred to as defendants throughout this opinion.

The strip of land was not on the Foster Township tax roll between 1927 and 1996 and the Haleys paid no taxes on it. In 1996, at the behest of the township assessor, the land was placed on the tax roll in the name of the Haleys (who had been dead for decades). The taxes went unpaid for 1996, 1997, and 1998, and in March 1999, the land was sold at a tax sale to appellant John T. Young for approximately \$15.00 (the amount of the unpaid 1996 taxes). Young and his wife foreclosed the tax lien against the Haleys, who were the last owners of record, but who were both deceased. Following the statutory redemption period, the state issued a tax deed to the Youngs in May 2000.

In October 2001, Charles and Lois Beyer, owners of lot 75 and the west ½ of lot 76, filed a quiet title action against Young and the Haley heirs, alleging adverse possession of the land immediately north of their lots fronting Ambrose Lake. A default judgment was entered against the Haley heirs and a settlement was reached between the Beyers and Young which resulted in this portion of the disputed land being deeded to the Beyers.

In March 2002, the present plaintiffs filed a quiet title action against Young and the Haley heirs, alleging adverse possession of the land north of their respective lots fronting the lake. The action was dismissed without prejudice after the plaintiffs failed to amend their defective pleadings.

In August 2003, plaintiffs filed the present lawsuit, alleging adverse possession of the land north of their respective lots fronting the lake, and also seeking to force the abandonment of Strand Avenue north of lots 1 through 23 and Broadway north of lots 75 through 86 and to grant them ownership of their respective portions of the abandoned streets.

In November 2003, defendant Patricia Zeck filed a quiet title cross-complaint against the Youngs and certain governmental entities, alleging a prescriptive easement, easement by necessity, and adverse possession of a portion of east Columbia Avenue that Zeck uses as a driveway to access her property, which is not part of the platted Ambrose Lake subdivision.

In December 2003, defendants/cross plaintiffs Mark and Mary Jo Schneider filed a cross-claim/counterclaim against the Youngs, alleging adverse possession of the land immediately north of their lots 3 and 4 and further alleging that they had not been provided with the requisite statutory notice of the opportunity to redeem this property in accordance with MCL 211.140 (now repealed). The Schneiders argued that as a “person or persons in actual open possession of the land,” they were entitled to statutory notice. MCL 211.140. The Schneiders also sought abandonment of that portion of Strand Avenue to which they claimed adverse possession.

The Youngs brought a motion for summary disposition pursuant to MCR 2.116(C)(7) [res judicata], (8) [failure to state a claim], and (10) [no issue of fact in dispute]. The Schneiders filed a cross motion for summary disposition. At the January 16, 2004 hearing, the trial court asked a few questions of counsel then ruled as a matter of equity that the tax sale and the Youngs’ tax deed were void and that the disputed strip of land “should be held in trust for all the lot owners of that subdivision, which is what it is originally intended to be used for, for them to have access.” The judge reasoned that to hold otherwise would be “so inequitable it’s against public policy.” The judge also ordered that the Youngs be reimbursed for the amount they had paid plus statutory interest, a total of approximately \$177.

When counsel expressed confusion as to the effect of the court's ruling on the outcome of the prior quiet title action, the court merely repeated that his ruling was based on equity principles and that this Court will have to determine whether the ruling is correct. When counsel asked whether the trial court was going to address the street abandonment issue, the trial court indicated that the issue was controlled by statute, not one that he could dispose of in equity.

The various parties submitted several proposed orders, after which various objections were filed and a settlement conference was held on March 11. At the hearing, counsel for the various parties again sought clarification of the impact of the court's ruling—including whether the tax sale was being voided or just the tax deed.

To avoid “people fighting each other” and “fences going up,” the judge ordered that the status quo of the disputed property be preserved “until the litigation is final.” The judge ultimately rejected all proposed orders and entered one that he prepared himself. The order, entered that day, provides in pertinent part:

THIS COURT FURTHER FINDS that it is inequitable, unconscionable and indefensible at law or in equity to permit the result of the tax deed; therefore, for the reasons stated on the record, the Court enters the following Order:

IT IS HEREBY ORDERED that the tax deed to Defendant Youngs recorded with the Ogemaw County Register of Deeds as document number 3022669 is hereby declared void.

IT IS FURTHER ORDERED that pending resolution of other issues, the disputed property shall remain in the same status as at the commencement of this action pending a determination of ownership of the disputed property.

IT IS FURTHER ORDERED that the Youngs are entitled to reimbursement of the amounts paid for the tax sale plus the statutory fifty (50) percent, plus any accrued interest at the legal rate.

IT IS FURTHER ORDERED that this is a final order with regard to the Youngs but does not resolve the remaining claims between the remaining parties to the litigation.

This appeal ensued.

II. STANDARD OF REVIEW

Defendants brought a motion for summary disposition pursuant to MCR 2.116(C)(7), (8), and (10). After hearing oral arguments on the motion, the trial court granted partial summary disposition against defendants under MCR 2.116(I)(2). In its ruling, the trial court voided defendants' tax deed “for the reasons stated on the record” at the summary disposition hearing. Issues of law are reviewed de novo on appeal. *Kuebler v Equitable Life Assurance Society of the United States*, 219 Mich App 1, 5; 555 NW2d 496 (1996). We also review de novo a trial court's decision on a motion for summary disposition. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003).

III. EQUITY

Defendants first assert that the trial court erred in voiding their tax deed based on equitable principles. We agree.

A court may not act in equity to avoid the application of a statute. *Stokes v Millen Roofing Co*, 466 Mich 660, 671; 649 NW2d 371 (2002). Rather, where a statute controls the requirements of redemption, equitable considerations are inapplicable “‘absent fraud, accident, or mistake.’” *Freeman v Wozniak*, 241 Mich App 633, 637; 617 NW2d 46 (2000), quoting *Senters v Ottawa Savings Bank*, 443 Mich 45, 55; 503 NW2d 639 (1993). The General Property Tax Act [GPTA], MCL 211.1 et. seq., controls the taxation of property and establishes the procedures through which property delinquent for taxes may be conveyed. The GPTA specifically sets forth how property conveyed through a tax deed may be redeemed and what happens if the GPTA’s notice requirements are not met. MCL 211.73a; MCL 211.74; MCL 211.141.

In this case, the trial court repeatedly noted that its decision was based on equitable principles. Although appellees attempt to frame the court’s ruling as a decision based on the notice requirements of the GPTA, the trial court never cited to the GPTA or any other statutory or case law in rendering its decision. In fact, although the trial court mentioned defendants’ failure to provide notice to the adjacent property owners, the court never applied the statutory provisions of the GPTA to the facts of the case. Based on the record before us, we conclude that the trial court erred in relying on equitable principles to void defendants’ tax deed because there is a controlling statutory scheme that sets forth the requirements for redeeming property conveyed through a tax deed and what should happen if the statutory scheme’s notice requirements are not met. MCL 211.73a; MCL 211.74; MCL 211.141; *Freeman, supra* at 637. There have been no allegations of fraud, accident, or mistake raised in this case. Therefore, the use of equitable principles to void defendants’ tax deed was error.

IV. NOTICE

Defendants further assert that the adjacent property owners were not entitled to notice of the right to redemption under MCL 211.140 and MCL 211.141. We are unable to resolve this issue based on the facts presented.

The GPTA requires that notice of the right to redemption be provided to certain persons that may have an interest in property sold due to tax foreclosure. *Ottaco, Inc v Kalport Development Co, Inc*, 239 Mich App 88, 90-91; 607 NW2d 403 (1999). Under MCL 211.141, certain enumerated persons, including those “in actual possession of the property” at the time of redemption are entitled to redeem property within six months of when the tax sale purchaser has complied with the notice requirements of MCL 211.140. *Burkhardt v Bailey*, 260 Mich App 636, 650-652; 680 NW2d 453 (2004); *Ottaco, Inc, supra* at 90-91.

MCL 211.140 requires that notice be given to the “person or persons in actual open possession of the land,” “at the time that notice was delivered to the sheriff for service on any person entitled to notice under subsection 140(1).” *Burkhardt, supra* at 650. The six-month period for redemption is tolled until notice is actually provided. *Ottaco, supra* at 91. “Because

this six-month period is the final redemption period, the statutory notice requirements must be strictly complied with.” *Burkhardt, supra* at 647.

The tax sale purchaser will be barred from asserting title against someone entitled to notice under MCL 211.140 if he fails to make a bona fide attempt to give the required notice within five years from when he became entitled to the tax deed. MCL 211.73a; *Burkhardt, supra* at 648. If someone redeems the property, the tax deed becomes void and the redeeming party has whatever interest they had in the property previously, plus “a lien against the property or interests in it not owned by the redeeming party for the cost of redemption or the portion of that amount that is lawfully chargeable to other interests.” MCL 211.141; *Burkhardt, supra* at 649.

In this case, the trial court granted partial summary disposition under MCR 2.116(I)(2). In doing so, the court relied on information beyond that contained in the pleadings. Therefore, the court’s decision is treated as if it was granted under MCR 2.116(C)(10). *Velmer v Baraga Area Schools*, 430 Mich 385, 389; 424 NW2d 770 (1988). A motion for summary disposition decided under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). However, the court may not make findings of fact in deciding a motion for summary disposition. *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994). Additionally, an order granting summary disposition is premature if it is granted before discovery concerning a disputed issue is complete. *Townsend v Chase Manhattan Mortgage Corp*, 254 Mich App 133, 140; 657 NW2d 741 (2002).

Only two parties to this action have submitted any evidence beyond the pleadings that they were in actual open possession of portions of the disputed property. Discovery was not complete in this case when the trial court granted partial summary disposition against defendants. Accordingly, this case must be remanded for further fact-finding as to whether the adjacent property owners were in actual open possession of the land when notice was delivered to the sheriff for service on those entitled to notice under MCL 211.140(1).

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Patrick M. Meter
/s/ Christopher M. Murray
/s/ Bill Schuette